

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON JEROME JACOBS,  
Plaintiff,  
v.  
CDCR, et al.,  
Defendants.

No. 2:20-cv-2266 KJM AC P

## ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 24, 2021, the magistrate judge issued findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 8. Plaintiff has filed objections to the findings and recommendations. ECF No. 12. Plaintiff attaches to his objections documents from the California Department of Corrections and Rehabilitation (CDCR) reflecting he did pursue an administrative process. As explained more fully below, the documents demonstrate that plaintiff filed his complaint closely prior to the administrative appeals process being completed. As his claims were not exhausted previously, but now are, he may file a new complaint under 42 U.S.C. § 1983.

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2       In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
3 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the  
4 findings and recommendations to be supported by the record and by the proper analysis.

5       I.     RELEVANT FACTS

6       In the findings and recommendations issued on May 24, 2021, the magistrate judge  
7 assigned to this matter recommended that this action be dismissed for failure to exhaust  
8 administrative remedies as clearly evidenced by the statements made by plaintiff in his complaint.  
9       See ECF No. 8 at 5-7. Specifically, in the complaint, plaintiff stated that his administrative  
10 appeals were still pending with prison officials, and that the step he had taken to appeal them was  
11 to file the instant complaint in federal court. See ECF No. 1 at 7. In addition, and in accord with  
12 the magistrate judge's dismissal recommendation, the magistrate judge recommended denial of  
13 plaintiff's motion for a preliminary injunction as moot. See ECF No. 8 at 7-8.

14       In plaintiff's objections, he now contends that he had, in fact, exhausted his administrative  
15 remedies prior to filing the instant action. See ECF No. 12 at 1-2. In support of this assertion,  
16 plaintiff attaches a document entitled "Claimant Appeal Claims Decision Response," which he  
17 contends establishes the exhaustion. See *id.* at 2, 5. The document, dated November 18, 2020,  
18 indicates that it was the only response plaintiff would receive from the Office of Appeals. See *id.*  
19 at 5.

20       II.    DISCUSSION

21       At issue here are the dates when plaintiff's prison appeals ended and when plaintiff filed  
22 the instant complaint. According to the mailbox rule, a document is deemed "filed" on the date  
23 the plaintiff places it in the hands of prison officials for forwarding. See *Houston v. Lack*, 487  
24 U.S. 266, 270, 276 (1988). A document is presumed to have been put in the hands of prison  
25 officials on the date it is signed and dated by the inmate. See, e.g., *Butler v. Long*, 752 F.3d 1177,  
26 1178 n.1 (9th Cir. 2014) (citing *Houston*); see also *Porter v. Ollison*, 620 F.3d 952, 955 n.2 (9th  
27 Cir. 2010).

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1       The record indicates that plaintiff signed his complaint on November 10, 2020. *See* ECF  
2 No. 1 at 11. Therefore, this is the date it is presumed that plaintiff delivered it to prison officials  
3 for filing. By contrast, the final decision issued by prison officials with respect to plaintiff's  
4 related administrative appeals was issued on November 18, 2020. *See* ECF No. 12 at 5.

5       Given these facts, it is clear that plaintiff filed the instant complaint more than a week  
6 before he had exhausted his administrative appeals in prison. The Prison Litigation Reform Act's  
7 exhaustion requirement does not allow a prisoner to file a complaint that contains unexhausted  
8 claims, even if he subsequently exhausts his administrative remedies while his federal case is  
9 pending. *See Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (citing *McKinney v.*  
10 *Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002)). For these reasons, the magistrate judge's  
11 recommendation that this action be dismissed is well-founded. *See McKinney*, 311 F.3d at 1199  
12 (stating dismissal required under 42 U.S.C. § 1997e(a) when exhaustion not complete prior to  
13 filing suit). Furthermore, without a viable complaint, there is no case or controversy. *See Sires v.*  
14 *State of Washington*, 314 F.2d 883, 884 (9th Cir. 1963). Therefore, plaintiff's motion for  
15 preliminary injunction is moot and must be denied as such.

16       As his claims were not exhausted, but now are, he may file a new complaint under 42  
17 U.S.C. § 1983.

18       Accordingly, IT IS HEREBY ORDERED that:

19       1. The findings and recommendations issued May 24, 2021 (ECF No. 8), are ADOPTED  
20 in full;

21       2. Plaintiff's motion for a preliminary injunction (ECF No. 6) is DENIED as moot, and

22       3. This action is DISMISSED for failure to exhaust administrative remedies. *See*  
23 42 U.S.C. § 1997e(a).

24 DATED: September 20, 2021.

25   
26 CHIEF UNITED STATES DISTRICT JUDGE  
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